No. 82-948

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

WARREN L. BEAN, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI

TO THE

APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION

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OF COUNSEL

QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court should review the propriety of a search which was properly held invalid under controlling state precedents.

2. Whether the warrantless, non-consensual search of an arrestee's wallet during booking procedures is authorized as a delayed search incident to arrest or as a proper inventory search in the absence of exigent circumstances or probable cause.

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OPINION BELOW

The opinion of the Appellate Court of Illinois, Third Judicial District, is reported at 107 Ill. App. 3d 662, 437 N.E.2d 1295 (3d Dist. 1982).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition for Writ of Certiorari (Petition at 1-2). However, as treated more fully in the argument portion of this Brief in Opposition, which this Court requested be filed by March 7, 1983, respondent does not believe that the petitioner has shown any compelling reason for this Court to grant the Writ of Certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner has quoted the provisions of the United States Constitution applicable to this case (Petition at 2).

STATUTE INVOLVED

Ill. Rev. Stat. 1981, ch. 38, §108-1.

> Search without Warrant. When a lawful arrest is effected a peace officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:
>
> (a) Protecting the officer from attack; or
>
> (b) Preventing the person from escaping; or
>
> (c) Discovering the fruits of the crime; or
>
> (d) Discovering any instruments, articles, or things which may have been used in the commission of, or which may constitute evidence of, an offense.

STATEMENT OF THE CASE

Petitioner's Statement of the Case adequately presents the facts pertaining to the questions presented. Respondent would note that all the evidence at the suppression hearing was presented in a stipulation which covers three pages in the record.

REASONS FOR DENYING THE WRIT

I.

THE ILLINOIS TRIAL AND APPELLATE COURTS PROPERLY SUPPRESSED THE EVIDENCE FOUND IN A SEARCH OF DEFENDANT'S WALLET UNDER CONTROLLING STATE PRECEDENTS.

The State has asked this Honorable Court to grant certiorari to determine whether a defendant's wallet may properly be searched at the police station after his arrest at another location at an earlier time. The State contends that the search

of a wallet in a defendant's possession at the time of arrest can be conducted at the station as either a delayed search incident to arrest or an inventory search. The state's position is that the station-house search of respondent's wallet was justified and reasonable under the Fourth Amendment, and the state has relied upon earlier decisions of this Court interpreting that amendment.

However, the decision of the Illinois trial and appellate courts in this cause may be sustained under state law, so this Court should decline to review the state court opinion. Under Illinois law, the search of the contents of the wallet was not justifiable as a delayed search incident to arrest or an inventory search. The federal constitutional question need not be reached.

It first must be stressed that the instant case has been a an appeal by the state to the Illinois reviewing courts. The trial court granted the respondent's motion to suppress evidence. Unless that court entered a manifestly erroneous order, its decision must be affirmed, as was done by the appellate court. People v. Fuentes, 91 Ill. App. 3d 71, 414 N.E.2d 876 (3d Dist. 1980). The Illinois Supreme Court has recognized the general rule that a warrantless search of luggage or "any other container of personal effects" is unconstitutional unless it can be justified under an established exception to the warrant requirement. People v. Bayles, 82 Ill. 2d 128, 411 N.E.2d 1346 (1980), cert. denied 453 U.S. 923 (1981); U.S. Const. amend. IV; Ill. Const. of 1970, art. I, §6. The state bears the burden to establish the exception. People v. Rinaldo, 80 Ill. App. 3d 433, 399 N.E.2d 1027 (2d Dist. 1980); See Arkansas v. Sanders, 442 U.S. 753, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (1979). The finding of the Illinois trial court that the state did not meet its burden was not manifestly erroneous and was properly affirmed on appeal.

The trial court's resolution of the merits of the motion to suppress is supported by Illinois law. The court first ruled that the respondent possessed an expectation of privacy in the wallet, independent of his body and clothing, and that the search of the wallet remote from the time and place of arrest was unreasonable. Thus, the court determined that the search of the wallet did not constitute a valid search incident to respondent's arrest.

Such a conclusion was proper under the Illinois statute which delineates when and where a police officer may search incident to an arrest. Ill. Rev. Stat. 1981, ch. 38, §108-1. An officer may only search for certain purposes, and none of those purposes was involved in the case at bar. Once the respondent was taken into custody and transported to the station where he turned over his wallet, there was no need to search the wallet to protect the police or prevent an escape. The crimes of battery and resisting arrest for which the respondent was arrested had no fruits, and no evidence or instrumentalities of those offenses could be in the wallet.

In a case similar to that at bar, involving the search of a purse after a battery arrest, the Illinois Supreme Court upheld the suppression of evidence from the purse, citing both Section 108-1 and the Illinois Constitution. People v. Helm, 89 Ill. 2d 34, 431 N.E.2d 1033 (1981). The Illinois Supreme Court held that the requirements of Section 108-1 for a search incident to arrest had not been satisfied where Helm was arrested at home and carried her purse to the station, where it was seized and searched. The Illinois Appellate Court relied on Helm in deciding the analogous case at bar. In light of Section 108-1 and the precedent in Helm, the Illinois courts properly ordered the suppression of the evidence from respondent's wallet on state grounds, so no federal question requires review here.

The trial court also resolved the inventory search question under Illinois law. The court ruled that

> . . . the search of the wallet did not constitute valid inventorying of its contents because there was no possibility of potential harm presented by defendant's wallet and because the preservation of the defendant's property and the protection of the police from claims of lost or stolen property could have been achieved in a less intrusive manner.

The trial court relied on such cases as People v. Bayles, 411 N.E.2d 1346 in reaching its conclusion. In upholding the trial court's decision, the Illinois Appellate Court cited Bayles and Helm and stated that

> Our supreme court in Bayles and Helm announced that personal containers seized incident to a lawful arrest may not be opened and inventoried absent exigent circumstances which justify the intrusion. Instead property must be sealed if possible and properly stored. 437 N.E.2d at 1300.

Thus, the Illinois courts which have heard this case have applied settled Illinois law in concluding that the contents of the wallet were not properly searched as an inventory. Illinois decisions have recognized the expectation of privacy which exists in closed containers of personal effects and have barred inventory searches of such containers. See also People v. Hamilton, 74 Ill. App. 3d 457, 386 N.E.2d 53 (1979); People v. Redmond, 73 Ill. App. 3d 160, 390 N.E.2d 1364 (1st Dist. 1979). Under Illinois law, as cited by the trial and appellate courts, the search of defendant's wallet was properly found unlawful. This Court need not review this case under federal constitutional principles on the inventory search question either.

Because the opinion of the Illinois Appellate Court and the ruling of the trial court were proper under settled Illinois law, there is no compelling reason for this Court to review the case at bar.

II.

EVEN IF THE FEDERAL CONSTITUTIONAL QUESTIONS IN THIS CASE ARE CONSIDERED, THE ILLINOIS COURTS CORRECTLY HELD THAT THE SEARCH OF RESPONDENT'S WALLET WAS NOT A VALID SEARCH INCIDENT TO ARREST OR INVENTORY SEARCH.

If this Honorable Court should determine that the holdings of the Illinois trial and appellate courts should not be upheld under state law, this Court should nevertheless deny the petition for writ of certiorari in this cause. The Illinois courts correctly applied federal constitutional law pertaining to searches in suppressing the evidence discovered in the search of respondent's wallet. On the sparse record before the trial court at the suppression hearing, the motion to suppress was properly granted. The State did not sustain its burden of justifying the warrantless, non-consensual search. Arkansas v. Sanders, 442 U.S. 753, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (1979).

The State urges this Court to review the case at bar along with People v. Lafayette, 99 Ill. App. 3d 830, 425 N.E.2d 1383 (3d Dist. 1981), petition for cert. granted, ___ U.S. ___, No. 81-1859 (Nov. 8, 1982). In Lafayette, this Court is reviewing the propriety of a station-house search of a shoulder bag or purse upon the arrest of the defendant. So Lafayette and the case at bar evidence similar questions. The State concedes that a similar expectation of privacy exists in a wallet as the container in Lafayette. This Court's recent decision in United States v. Ross, __ U.S. ___, 102 S. Ct. 2157, 72 L. Ed. 2d 572, 592 (1982) certainly indicates that, for Fourth Amendment purposes, distinctions should not be made on the basis of the nature or type of repository for personal effects. A wallet in an arrestee's pocket should not be treated differently from a purse or shoulder bag under his arm. The same principles should apply to post-arrest station-house searches of purses and wallets.

Accordingly, the respondent in the case at bar would ask this Court to deny the petition in this cause because the Illinois courts correctly resolved the merits of the search issues here as in Lafayette. The respondent would rely heavily on the respondent's brief and the brief of the amicus curiae, the California State Public Defender, in Illinois v. Lafayette. The search of respondent's wallet was not justified as a search incident to his arrest or an inventory search.

A. THE SEARCH OF RESPONDENT'S WALLET AT THE POLICE STATION WAS NOT A VALID SEARCH INCIDENT TO HIS ARREST WHERE THE DELAYED SEARCH WAS REMOTE FROM THE PLACE OF ARREST AND NO EXIGENT CIRCUMSTANCES OR PROBABLE CAUSE EXISTED.

The state urges this Court to find that the station-house search of respondent's wallet was a valid search incident to his arrest. The state relies on United States v. Robinson, 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973), where this Court ruled that the authority to search a person incident to his arrest does not depend on the probability that evidence or weapons will be found, and United States v. Edwards, 415 U.S. 800, 94 S. Ct. 1234, 39 L. Ed 2d 771 (1974), where this Court indicated that a defendant's person and the property "in his immediate possession" may be searched at the station after his arrest at another site. The state goes on to list various federal and state cases which have upheld station-house wallet searches as being incident to the arrest of a defendant elsewhere.

This Honorable Court should decline review in this case and reject the state's position because the state has failed to take into account the impact of the "closed container" cases on earlier decisions such as Robinson and Edwards. This Court has long recognized that a search incident to arrest may not be

conducted "remote in time or place from the arrest." Preston v. United States, 376 U.S. 364, 84 S. Ct. 881, 11 L. Ed. 2d 777 (1964). Insofar as repositories of closed containers are concerned, this Court barred delayed searches incident to arrest in United States v. Chadwick, 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538 (1977).

> [W]arrantless searches of luggage or other properties seized at the time of an arrest cannot be justified as incident to that arrest either if the "search is remote in time or place from the arrest," Preston v. United States, 376 U.S. at 367, or no exigency exists. Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest. 433 U.S. at 15.

The Chadwick decision limits the application of Edwards to searches of an arrestee's person and his clothing as an incident of arrest. An independent expectation of privacy exists in repositories of personal effects. Any container, be it a wallet, purse, shoulder bag, envelope, or something else in which an expectation of privacy exists (See United States v. Ross) may not be searched at the station house when the arrestee has been removed from the time and place of arrest. See New York v. Belton, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981), which upheld a contemporaneous search of containers incident to the arrest of the occupant of a car, and the respondent's brief in Illinois v. Lafayette, at 27-30, 35-38, and the brief of the amicus curiae at 5-18.

The dicta in Chadwick about "personal property not immediately associated with the arrestee's person" should not be read to mean that some repositories of personal effects can be examined in a delayed search incident to an arrest (See

respondent's brief in Lafayette at 38-42).[1] The Edwards case involved a delayed search of the arrestee's clothing. The concept of personal property immediately associated with the person should be limited to his clothing and not extend to containers which may be removed from the pockets of that clothing or readily separated from that clothing. Otherwise even containers such as envelopes, which could contain extremely personal documents (e.g., letters or financial statements), would be open to search without good cause. An arrestee should not be subjected to unnecessary and potentially embarrassing disclosures of his intimate affairs just by virtue of an arrest where no other basis for a search of his repositories of personal effects exists. See Ex Parte Jackson, 96 U.S. 727, 733, 24 L. Ed. 877 (1878).

The respondent would urge this Court to take the position that delayed station-house searches of containers of personal effects in police control incident to arrest are improper in the absence of exigent circumstances where the containers are removable from the arrestee's clothing (See Respondent's brief in Lafayette at 41-42 and brief of amicus curiae at 13-18). Under such a rule, which is consistent with Chadwick, Arkansas v. Sanders, and Ross, the Illinois courts correctly decided the case at bar, so review is unnecessary. The respondent's wallet was in exclusive police control at the station before its contents were searched and no exigent circumstances were present. The state had authority to seize the wallet, but not to search it. Chadwick, 433 U.S. at 10.

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[1]Most of the cases which the state cites (Petition at 8-10) either predate Chadwick or fail to engage in any analysis in light of Chadwick. Those few cases such as United States v. Passaro, 624 F.2d 938 (9th Cir. 1980), cert. denied, 449 U.S. 1113 (1981) and State v. Brown, 634 P.2d 212 (Ore. 1981), which do cite Chadwick fail to recognize the limitations which Chadwick imposed on cases such as Edwards. This Court has never held that repositories of personal effects can be "immediately associated" with an arrestee so as to be subject to search incident to his arrest.

It should be emphasized, as in the opinion of the Illinois Appellate Court, that there was no probable cause to believe that the wallet contained contraband, a weapon or evidence of a crime. The respondent was arrested for an offense which involved no fruits or instrumentalities and, so far as the record shows, the police had no reason to suspect that he had a weapon. In the absence of probable cause, the reasonableness of a search of a container in which a significant expectation of privacy rests is certainly questionable. The reduced expectation of privacy in the person of an arrestee should not be applied to containers which he carried in the absence of probable cause pertaining to the containers, at least once those containers are in police control. 437 N.E.2d at 1299; Chadwick, 433 U.S. at 16, n.10. In the absence of probable cause, any repository in police control should not be opened as an incident to arrest since control of the object prevents the destruction of evidence or the defendant's obtaining a weapon.[2]

This Court should refuse to review the case at bar because the warrantless, nonconsensual search of defendant's wallet at the police station in the absence of probable cause or exigent circumstances was not a proper search incident to arrest. The Illinois Appellate Court properly concluded that a container such as a wallet should not be subject to a delayed search after an arrest.

B. THE SEARCH OF RESPONDENT'S WALLET WAS NOT A PROPER INVENTORY SEARCH WHERE THERE WAS NO NEED TO OPEN THE WALLET AND THE OBJECTIVES OF AN INVENTORY SEARCH COULD HAVE BEEN ACCOMPLISHED BY SEALING THE WALLET AND SECURING IT IN A LOCKER.

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[2]Notably, there was probable cause for the delayed search of defendant's clothing in United States v. Edwards.

The second rationale which the state advances to justify the search of respondent's wallet is that the wallet was properly searched as part of an inventory of respondent's belongings during booking. The stipulation of facts in this case indicates that the respondent was ordered to turn over all his property during booking and that the wallet was searched as an inventory procedure.[3] The state relies on this Court's decision in South Dakota v. Opperman, 428 U.S. 364, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (1976) to support its claim that an inventory of respondent's possessions, including his wallet, was proper.

In light of the rationale for inventory searches as defined by this Court in Opperman, the respondent would submit that the Illinois trial and appellate courts correctly held the inventory search of the wallet to be invalid. It must be emphasized that the wallet was a repository of personal effects in which the respondent had a significant expectation of privacy -- a fact which the State has not disputed. Certainly far greater privacy interests attach to a wallet than an automobile, as was recognized by this Court in Opperman (See respondent's brief in Illinois v. Lafayette, at 9-10). The wallet was not being taken to respondent's jail cell, but rather was being seized for safekeeping by the police. See Bell v. Wolfish, 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979). The police could have accomplished their purpose without intruding on respondent's privacy rights by examining the contents of the wallet, so the inventory search was properly held to be unlawful by the Illinois courts.

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[3]Since the stipulated facts indicate that the wallet was searched during an inventory, the record in the case at bar does not really support the search-incident-to-arrest theory. There was little development of that theory at the suppression hearing. The trial court made a ruling on the search-incident-to-arrest theory, but the sparseness of the record is another reason why review of that theory is not warranted in this case (See respondent's brief in Illinois v. Lafayette at 26). The inventory and search-incident-to-arrest theories should not be commingled (See respondent's brief in Lafayette at 7-8), and there is no compelling reason to review either one.

This Court has never held that inventory searches of repositories of personal effects, such as wallets or luggage, are justified. Pursuant to Opperman, inventory searches are tested under the reasonableness standard of the Fourth Amendment. A needless intrusion into a closed container is not reasonable. Even in upholding the automobile inventory in Opperman, this Court restricted the scope of an inventory procedure so as to protect containers (See respondent's brief in Lafayette at 11-13). The individual's privacy interests in containers such as luggage and wallets should prevail over the police interests in conducting an inventory.

Three such police interests were recognized in Opperman -- (1) protection of the owner's property while in police custody, (2) protection of the police from claims of lost or stolen property and (3) protection of the police against danger. None of those three interests was at all compelling in the case at bar so as to override respondent's privacy interest in the wallet. There is no need to search the contents of a wallet or other container to serve the police interests. The sealing and securing of containers as units protects the police from danger, safeguards the containers and their contents and protects the police from false claims. A wallet can be taped shut or sealed in a bag in the arrestee's presence and then be stored in a locker, thus satisfying the police interests (See respondent's brief in Lafayette at 13-17).

The determination of the Illinois courts that the search of the wallet was unlawful was certainly justified on the record here. There were no exigent circumstances to suggest a need to open the wallet. There was no reason to believe that the wallet or its contents posed a threat to the police. The respondent did not consent to the search. The total circumstances of this case (Opperman, 428 U.S. at 375) justify the conclusion of the Illinois courts. And that conclusion is consistent with the

prevailing case law from other jurisdictions on inventory searches of repositories of personal effects (See respondent's brief in Lafayette at 13 and the brief of the amicus curiae at 18-30). Review of this case is not compelled.

Adoption of the state's position would severely erode the right to privacy for arrested persons. The police should not open containers absent a specific reason or exigency. The State's attempt to equate pockets with containers is not persuasive. Clothing is difficult to seal shut, as items may readily fall out. And the arrestee may be called upon to wear the clothing in the jail or at a court appearance, so access to the pockets is a concern. The expectation of privacy in containers of personal effects which can readily be removed from clothing should not be infringed upon unnecessarily. The instant case has been decided by the Illinois courts consistently with a clear, enforceable and reasonable rule that repositories of personal effects should be inventoried as a unit. The State's petition, which contains little discussion of inventory searches but urges that they not be limited, should be denied. This Court has never permitted unlimited inventory searches and should not permit unreasonable intrusions into containers. The police have no right to conduct inventory searches, so this Court should not seek to protect such a state interest.

CONCLUSION

For the foregoing reasons, respondent prays that this Honorable Court deny the state's Petition for Writ of Certiorari.

Respectfully submitted,

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COUNSEL FOR RESPONDENT

NO. 82-948

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

WARREN L. BEAN, Respondent

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Respondent, Warren L. Bean, by and through his counsel, Robert Agostinelli, Deputy Defender, Office of the State Appellate Defender, Third Judicial District, requests leave to file the attached Brief for Respondent in Opposition, without pre-payment of costs and to proceed in forma pauperis pursuant to Rule 46. The Respondent was previously granted leave to proceed in forma pauperis in this cause both in the Illinois Appellate and Supreme Courts.

The Respondent's affidavit in support of this Motion is attached hereto.

Robert Agostinelli
ROBERT AGOSTINELLI

SUBSCRIBED AND SWORN TO
Before me this 7 day
of March 1983.

NOTARY PUBLIC

NO. 82-948

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

WARREN L. BEAN, Respondent

I, Warren L. Bean, being first duly sworn according to law, depose and say, in support of my Motion for Leave to Proceed without being required to prepay costs and fees:

1. I am the Respondent in the above-entitled cause.

2. Because of my poverty I am unable to pay the costs of said cause.

3. I am unable to give security for the same.

4. I believe that I am entitled to the redress I seek in said cause.

5. I was determined to be indigent by the Circuit Court of Rock Island County, Illinois and counsel was appointed to represent me on appeal to the Illinois Appellate and Supreme Courts.

FURTHER Affiant sayeth not.

Warren L Bean
WARREN L. BEAN

SUBSCRIBED AND SWORN TO
Before me this 30th day
of February, 1983.

Eugenia M Sabo
NOTARY PUBLIC

NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES MAR 19 1985
[illegible] NOTARY ASSOC

No. 82-948

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

WARREN L. BEAN, Respondent.

CERTIFICATE OF SERVICE

I, Robert Agostinelli, a member of the bar of this Court and representing Respondent in this cause, certify:

(1) That I have served one copy of the Motion for Leave to Proceed in Forma Pauperis, the Affidavit in support thereof, and Brief for Respondent in Opposition on Counsel for Petitioner, by depositing same in a United States Post Office mail box at 628 Columbus Street, Ottawa, Illinois 61350, with first class postage prepaid, and with the envelope addressed as follows:

Honorable Neil Hartigan
Attorney General
188 West Randolph - Suite 2200
Chicago, Illinois 60601

(2) The above named party is the only party required to be served.

(3) I further state to the best of my knowledge that the Court's copies of these documents were enclosed in an envelope, properly addressed to the Clerk of this Court, and that said envelope was deposited in a United

States Mail Box at 628 Columbus Street, Ottawa, Illinois 61350, with first class postage prepaid on the 3rd day of March, 1983, which is within the permitted time of filing.

Robert Agostinelli
ROBERT AGOSTINELLI

SUBSCRIBED AND SWORN TO
Before me this 3rd day
of March, 1983.

Donna Lee
Notary Public